



Jim Gerlinger, Governor
Michael Geesey, Director

STATE OF WYOMING

DEPARTMENT OF AUDIT MINERAL AUDIT DIVISION

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May 27, 1997

David S. Guzy, Chief
Minerals Management Service
Royalty Management Program
Rules and Procedures Staff
PO Box 25165, MS 3101
Denver, CO 80225-0165

RE: "Delegation of Royalty Management Functions to States" published in the Federal Register on April 24, 1997, 62 F.R. 19967.

Dear Mr. Guzy:

The State of Wyoming (Wyoming) appreciates being given the opportunity to provide the following comments to the referenced Federal Register Notice.

GENERAL COMMENTS

Wyoming initiated unreimbursed cooperative audits with the Department of Interior in 1981 and was the first state to be delegated audit functions under the Federal Oil and Gas Royalty Management Act, (FOGRMA) Section 205, in 1985. We have experience in negotiating and administering a FOGRMA, Section 205 contract. We have found that the environment in which we audit is very dynamic. An audit organization needs to remain flexible in order to effectively and efficiently utilize the resources that are, at best, limited; and to influence compliance with the applicable laws in order to be accountable in our service to the public.

We are concerned that MMS' proposed rules will not allow for flexibility because of the repeated use of the word "must" throughout the regulations. An organization should be allowed to adjust to a changing environment and apply a better approach or technique without having the fear of the audit contract being withdrawn or the audit findings negotiated.

We recommend that MMS rethink its approach to regulation of delegated functions to provide for less restrictive, more efficient objectives.

Below, we provide some of our concerns related to specific "Sections" of the proposed regulations and offer alternative language.



David Guzy
May 27, 1997
Page 2

SECTION ANALYSIS

Section 227.105 is not clear whether a hearing is required if a state currently has a 205 delegation under the provisions of FOGRMA and elects to make no changes, or minor changes, i.e. assume signature and subpoena authority. We recommend that the rule allow for flexibility by changing the first paragraph to read "...MMS will schedule a hearing, if necessary, ...". We presume that MMS currently has a high level of confidence with our audit program given the length of time the state has had a 205 delegation and the expertise we have developed during the last sixteen years.

In Section 227.112(d) the regulations imply that a state would be required to provide all vouchers detailing expenditures. We do not support requirements that are more stringent than those currently in effect. We recommend that MMS change the language to indicate that vouchers would be made available during a performance review, if requested by the review team.

Section 227.200(f) states, "...States would provide corrected reference data to MMS such as: lease acreage, lease ownership, royalty rates, unit and communitization agreement allocation factors, and payor information.." Although Wyoming is not opposed to assisting MMS in maintaining an accurate database, we strongly encourage MMS to work closely with its sister agency, the Bureau of Land Management to avoid duplication and to efficiently and effectively maintain the data that may already be available.

Section 227.300(l) states, "...Thus, although MMS would decide all appeals...". This section implies that MMS will not adapt the recommendation of the Royalty Policy Committee (RPC) related to Appeals and Alternative Dispute Resolution. Wyoming is represented on the RPC and its Subcommittees and fully agrees with their recommendations related to Appeals. We recommend that MMS adopt the RPC recommendation and remove the reference in the proposed regulations to MMS deciding all appeals.

Section 227.301(b) requires following the annual audit work plan, without allowance for potential work plan adjustments. We find such adjustments to be necessary frequently. Part (e) requires audit reports at a time when MMS is considering abolishing the need for audit reports. We recommend MMS allow for flexibility and remove the word 'must' in the first line. We believe that MMS should allow states to depart from the standards with adequate justification.

Section 227.600 should be rewritten to allow for flexibility in developing a system that is customized to automated verification, subject to MMS approval, that takes into consideration cost effectiveness. A customized system could be used as a tool to help determine if an audit is necessary.


David Guzy
May 27, 1997
Page 3

Section 227.601 would hold states to a standard that is above what MMS currently performs. We recommend striking the word "all" in every part of this section.

Section 227.801 does not allow for a state to appeal MMS' potential finding that a State is not performing in accordance with the Standards or regulations. We recommend MMS rewrite the Section 227.801, 227.802 and 227.803 to include an appeal process related to the delegation of Royalty Management functions.

Wyoming appreciates being given the opportunity to provide comments on the proposed regulations and recommends that MMS incorporate our change before the promulgation of a final rule.

Sincerely,


Randy A. Bolles
Acting Administrator

Cc: Michael Geesey